

10714



**FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : BIR/00CT/LDC/2014/0011
Property : Warwick Manor Warwick Road Solihull B91 1AU
Applicant : Warwick Manor Management Company Limited
Representative : Pennycuick Collins
Respondents : The Lessees of Warwick Manor
Type of Application : An Application under Section 20ZA of the
Landlord & Tenant Act 1985 for dispensation of
the Section 20 consultation requirements.
Tribunal Members : Mr Vernon Ward BSc (Hons) FRICS
Mr Paul Hawksworth Lawyer
Date of Decision : 17 March 2015

DECISION

Background.

1. The Application requests the Tribunal to grant a dispensation from the consultation requirements contained within section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”) in respect of lift improvements to Properties at Warwick Manor Warwick Road Solihull B91 1AU.
2. The Applicant, Warwick Manor Management Company Limited, is the management company for the development, whilst the Respondents are the lessees of the development.
3. The repairs in question are to the lift installed within blocks 4 – 6 Warwick Manor. In October 2014 Westbury Lifts, the lift maintenance contractor in respect of the development, were instructed to attend a call-out to the lift in the aforementioned block. Upon attendance at the site they discovered that the inverter drive unit that powers the lift motor was defective and would not be operational until a repair had been undertaken. The Applicant instructed ILECS (International Lift and Escalator Consultants) in order to determine whether Westbury’s analysis was correct. ILECS duly confirmed that Westbury had correctly advised the fault.
4. Following this the Applicant sought quotations for the repair of the inverter drive unit to which were as follows:

Stannah	£5,000 + VAT
Westbury Lifts	£3,864 + VAT

5. Under the provisions of the 1985 Act and the 2003 Regulations, the Applicant is required to consult if the cost of the works is in excess of £250 including VAT per leaseholder. There are six apartments which contribute towards the cost of these works and hence the consultation limit is £1500. The works proposed will therefore be qualifying works within the meaning of section 20ZA (2) of the 1985 Act. The Applicant claims that agreement to proceed with the works is urgently required as by following consultation procedures, the lift will be out of action for the next three months which is unacceptable to the owners/occupiers and as such an application for dispensation has been submitted.
6. Copies of the ILECS report and the quotations received from Stannah and Westbury were circulated to all leaseholders. The Applicant received no representations in respect of the same and further the Tribunal received no representations direct from any lessee.

THE LEASE

7. Under Clause 2 of the Eighth Schedule Part One of the Lease, the lessees covenant as follows:

“To pay to the Management Company or its authorised agent the Lessee’s Proportion at the times and in the manner provided”

8. “The Lessee’s Proportion” is defined within the Seventh Schedule of the Lease as:

“1. The Lessee’s Proportion means:

1.1 The Part A proportion of the amount attributed to the costs in connection with the matters mentioned in Part A of the Sixth Schedule and of whatever of the matters referred to in Part C of the said Schedule are expenses properly incurred by the Management Company or his agent which are relative to the matters mentioned in Part A of the said Schedule.

1.2 The Part B proportion of the amount attributable to the costs in connection with the matters mentioned in Part B of the Sixth Schedule and of whatever of the matters referred to in Part C of the said Schedule are expenses properly incurred by the Lessor or his agent which are relative to the matters mentioned in Part B of the said Schedule.”

9. Within the Particulars to the Lease, the Proportions are defined as follows:

<i>Part A Proportion</i>	<i>7.142% (The Estate Costs)</i>
<i>Part B Proportion</i>	<i>11.11% (The Building Costs)</i>

10. The items defined as “Building Costs” are detailed within the Sixth Schedule Part B. Within that Schedule, clause 7 states:

“7. Inspecting maintaining repairing and where necessary renewing the passenger lift located in the Buildings and including the procurement of statutory lift insurance.”

THE INSPECTION

11. The Tribunal carried out an inspection of the development on 12 February 2015. Present at the Inspection were Mrs Lyndsey Cannon-Leach, Associate Partner, and Laura Lock, Property Manager, both of Pennycuik Collins on behalf of the Applicant and also a representative of Westbury Lifts.
12. Warwick Manor comprises a modern development of nine apartments in three blocks of three units. Each block has a unit on ground, first and second floors.

The six upper floor apartments contribute to the lifts of which there is one in each block. As indicated above Block 4 - 6 contains the defective lift system.

13. The Tribunal inspected the lift and were shown the inverter drive. The Tribunal were advised at the inspection that the repair had been carried out due to the fact that one of the upper floor residents could not manage without the same. The Tribunal were further told that no objections to the repair had been received and that indeed, the leaseholders had wished repairs to be carried out urgently to restore the lift to full working order.

THE LAW

14. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are collectively known as the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to "qualifying works" (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250.
15. There are essentially three stages in the consultation procedure, the pre tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and in some cases a third stage advising that the leaseholders that the contract has been placed and the reasons behind the same.
16. It should also be noted that the dispensation power of the First-tier Tribunal under section 20ZA of the 1985 Act only applies to the statutory consultation requirements and does not confer any power to dispense with any contractual consultation provisions which may be contained in the lease.

THE TRIBUNAL'S DETERMINATION

17. The Lease provides for the cost of repairs to the lift to be recovered from upper floor leaseholders by way of the service charge.
18. It is clear to the Tribunal from the information supplied by the Applicant and also provided by the lift engineer on site that a repair to the lift was required in order to put it back into operation. Due to the nature of the development it is also apparent that the lift being out of operation would present problems to occupiers of upper floor apartments who did not have full mobility.

19. Section 20ZA of the 1985 Act does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. Following the Supreme Court's judgement in *Daejan Investments Limited v Benson et al* [2013] UKSC 14, the Tribunal in considering whether dispensation should be granted in this matter should take into account the extent to which leaseholders were prejudiced by the landlord's failure to consult.
20. The Tribunal cannot see that the leaseholders have been prejudiced by the consultation procedures not being followed. The Applicant used a specialist contractor to determine if the fault had been diagnosed correctly and secondly obtained two quotations to ensure that the cost of the works were reasonable. The leaseholders were kept fully informed as to the works proposed and from the submissions made by the Applicant appear to have been instrumental in the decision making process. Further no leaseholder has made representations of any kind to the Tribunal.
21. The Tribunal is satisfied that the works were urgently required and that, on the evidence provided, it is reasonable to dispense with the consultation requirements of section 20 of the 1985 Act as there is no evidence to indicate that any leaseholder had been prejudiced. Accordingly, dispensation is duly granted unconditionally.
22. Parties should note that this determination does not prevent any later challenge by any of the respondent leaseholders under sections 19 and 27(A) of the 1985 Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.
23. In making its Determination, the Tribunal had regard to its inspection, the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not to any special or secret knowledge.

Appeal

24. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc Hons FRICS Chairman